

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
TESTAMENTARY AND INTESTATE JURISDICTION

CHAMBER SUMMONS NO.17 OF 2005

IN

SUIT NO.23 OF 1990

IN

PETITION NO.458 OF 1989

Mr.Nardigh M.Prabhu .. Plaintiff

Vs.

Mr.Chandrakant M.Prabhu & Ors. .. Defendants

Mr.D.R.Mishra for the plaintiff

Ms.D.M.Chaudhari for the defendants

CORAM : S.U.KAMDAR, J

DATED : 9TH JUNE 2005

P.C.:

1. The petitioners have taken out the present Chamber Summons for appointment of Commissioner for recording evidence in the matter of one of the attesting witness in view of the fact that another attesting witness has already expired who has attested last will and Testament of one Mr.Mukund J.Prabhu. The learned counsel for the plaintiff also makes a statement that he has no objection if the witness is also examined by the Commissioner under the provisions of Order 22 Rule 4a of the

Civil Procedure Code.

2. However, the learned counsel for the defendants vehemently opposes the present application and interalia it is contended that the Commissioner should not be appointed because of peculiar facts and circumstances of the case where two of the sons of the deceased who were handicapped has been excluded from the purported will of the deceased put up by the plaintiff herein. In my opinion that is more a reason that matter should be expeditiously heard and evidence must be expeditiously concluded so that if the handicapped children of the deceased are entitled in share they can be given benefits. I am informed handicapped child is already expired. In my opinion, the present suit should be heard expeditiously and the same can be done if Commissioner is appointed for recording evidence. I accordingly, under Rule 4(a) of the Civil Procedure Code appoint Mr.Satish Shah to record evidence. I direct the Commissioner to complete the evidence on or before 15.08.2005. It is made clear that if any of the parties do not cooperate

in leading evidence on the dates fixed and if the witness is not produced even after giving one or two adjournments at the maximum then such evidence will be closed. Commissioner will conclude the evidence and file report on or before the date fixed. Both the parties to share equal cost charges and expenses of the Commissioner.